

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

RICKY L. WILSON,)
) C.A. No. K10A-08-004 JTV
 Appellant,)
)
 v.)
)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD and TOWLES)
 ELECTRIC,)
)
 Appellee.)

Submitted: April 27, 2011

Decided: July 27, 2011

Ricky L. Wilson, *Pro Se.*

Towles Electric, *Pro Se.*

*Upon Consideration of Appellant's
Appeal From Decision of the
Unemployment Insurance Appeal Board*

AFFIRMED

VAUGHN, President Judge

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ORDER

Upon consideration of the appellant's brief¹ and the record of the case, it appears that:

1. Ricky Wilson, the appellant, was employed as an electrician by Towles Electric from October 21, 2008 until March 5, 2010, when he was discharged. The appellant was discharged when he used a company truck for personal use without approval.

2. His personal use of the vehicle was a violation of company policy. During the proceedings below, the appellant admitted that he used the vehicle without approval, but sought to excuse his violation of company policy. According to the appellant's testimony, he used the company vehicle because his own personal vehicle ran out of gas on the day of the incident. On March 5, the appellant returned to work from a day in the field. Since it was the end of the work day, he went to start his personal vehicle in order to drive home. The vehicle started but immediately turned off. His truck was out of gas and he had no money. As a result, the appellant took a company truck to his brother's house and got money for gas. He then proceeded to get gas and return to his personal truck.

3. At the hearing before the Unemployment Insurance Appeal Board, a representative for Towles Electric testified. Towles uses a Global Positioning System to log the location of all its company vehicles. The office manager realized that the appellant drove the vehicle for personal use after reviewing the GPS logs for March 5. Only after being confronted with the log did the appellant admit his infraction.

¹ The appellee has chosen not to file an answering brief.

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The representative produced the log at the hearing. It indicated that the appellant took the company vehicle from 6:31 p.m. to 7:55 p.m., and the representative testified that the appellant never called the owner to get permission. Before the Board, the representative also testified that the company's policy handbook clearly stated that the use of company property, without prior permission, was against Towles' rules. Additionally, he testified that the appellant received a copy of the policy handbook and signed it – stating he read and understood all of the Towles' policies.

4. The Board held that the appellant was discharged from his work for just cause. In doing so, the Board reversed the prior decision of the Appeals Referee which granted unemployment benefits. The Board found that the appellant used the company vehicle without approval and did not admit his infraction until being confronted with the GPS by the office manager. In the Board's opinion, this combination indicated reckless indifference to company rules. Therefore, it held that the employer had just cause to discharge the appellant.

5. The appellant contends that Towles lacked the necessary just cause to terminate him. He is appealing the decision below because, in his opinion, the Board should not have reversed the Appeals Referee. He argues that at both hearings Towles presented the same evidence, and, therefore, the Board should not have reversed the decision below. Moreover, the appellant contends that his actions did not warrant termination because he used the vehicle only under extenuating circumstances and never violated company rules prior to that day.

6. In reviewing decisions from the Board, the court is limited to

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consideration of the record which was before the administrative agency.² The court must determine whether the findings and conclusions of the Board are free from legal error and are supported by substantial evidence in the record.³ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁴ The court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁵ The reviewing court merely determines if the evidence is legally adequate to support the agency's factual findings.⁶ Where a party bearing the burden of proof fails to convince the Board below, the resulting findings of fact can be overturned by the court "only for errors of law, inconsistencies, or capricious disregard for competent evidence."⁷

7. Pursuant to 19 *Del. C.* § 3314 an employee is ineligible to receive unemployment benefits if he or she has been terminated for just cause.⁸ The term

² *Hubbard v. Unemployment Ins. Appeal Bd.*, 352 A.2d 761, 763 (Del. 1976).

³ *Unemployment Ins. Appeal Bd. v. Martin*, 431 A.2d 1265, 1266 (Del. 1981); *Pochvatilla v. United States Postal Serv.*, 1997 WL 524062, at *2 (Del. Super. 1997); 19 *Del. C.* § 3323(a) ("In any judicial proceeding under this section, the findings of the [UIAB] as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the Court shall be confined to questions of law.").

⁴ *Oceanport Ind. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986).

⁵ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

⁶ *Majaya v. Sojourners' Place*, 2003 WL 21350542, at *4 (Del. Super. 2003); see 19 *Del. C.* § 3323(a) (providing that, absent fraud, the factual findings of the Board shall be conclusive and the jurisdiction of a reviewing court shall be confined to questions of law).

⁷ *Ridings v. Unemployment Ins. Appeal Bd.*, 407 A.2d 238 (Del. Super. 1979).

⁸ The statute provides: "An individual shall be disqualified for benefits ... [f]or the week in which the individual was discharged from the individual's work for just cause in connection

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“just cause” denotes a wilful or wanton act in violation of either the employer’s interest, or the employee’s expected standard of conduct.⁹ Wilful or wanton conduct is “that which is evidenced by either conscious action, or reckless indifference leading to a deviation from established and acceptable workplace performance.”¹⁰ In a termination case, the employer has the burden of proving just cause.¹¹

8. Violation of a reasonable company rule may constitute just cause for discharge if the employee is aware of the policy and the possible subsequent termination.¹² This Court uses a two-step analysis to evaluate just cause: “1) whether a policy existed, and if so, what conduct was prohibited, and 2) whether the employee was apprised of the policy, and if so, how was he made aware.”¹³ Knowledge of a company policy may be established by evidence of a written policy, such as an employer’s handbook¹⁴ or by previous warnings of objectionable conduct.¹⁵

9. The appellant’s first contention, that the Board could not reverse prior

with the individual’s work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks” 19 *Del. C.* § 3314(2).

⁹ *Moeller v. Wilmington Sav. Fund Soc’y*, 723 A.2d 1177, 1179 (Del. 1999); *Tuttle v. Mellon Bank of Del.*, 659 A.2d 786, 789 (Del. Super. 1995); *Abex Corp. v. Todd*, 235 A.2d 271, 271 (Del. Super. 1967).

¹⁰ *MRPC Fin. Mgmt. LLC v. Carter*, 2003 WL 21517977, at *4 (Del. Super. 2003).

¹¹ *Country Life Homes, Inc. v. Unemployment Ins. Appeal Bd.*, 2007 WL 1519520, at *3 (Del. Super. May 8, 2007); *Carter*, 2003 WL 21517977, at *4.

¹² *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super. 1996).

¹³ *Id. See Parvusa v. Tipton Trucking Co. Inc.*, C.A. No. 92A-12-009 (Del. Super. 1993).

¹⁴ *Id.* (citing *Honore v. Unemployment Ins. Appeal*, 1993 WL 485918 (Del. Super. 1993)).

¹⁵ *Id.*

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decisions without new evidence is without merit. “The Board may base its decision on evidence previously submitted to the Appeals Referee or on new, additional evidence.”¹⁶ In fact, the Board conducts its own review of the evidence and makes its own determination of credibility that may differ from the conclusions and findings of previous hearings.¹⁷

10. There is substantial evidence to support the Board’s conclusion. The appellant in this case admits that he used the company truck without asking for permission, and testified that he knew of Towles’ policy banning such actions. Additionally, the Board found that he did not attempt to call a supervisor to get permission, or admit to the violation until he was confronted with indisputable evidence. The record shows that the appellant willfully violated a reasonable company policy, which he knew about prior to his violation.

11. For the reasons stated above, the Board’s decision is ***affirmed.***

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File

¹⁶ *Robbins v. Deaton*, 1994 WL 45344, at *4 (Del. Super. 1994).

¹⁷ Unemployment Ins. Appeal Bd. Regulation 4.1; *Robbins*, 1994 WL at *4.